



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 6891-99  
28 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Marine Corps on 12 January 1982 for three years as a SGT (E-5). At the time of your reenlistment, you had completed nearly six years of prior active service.

The record reflects that you served for nearly 10 months without incident. However, during the nine month period from November 1982 to August 1983 you received two nonjudicial punishments (NJP) for stealing about 30 rounds of machine gun ammunition, dereliction in the performance of your duties, and making a false official statement. At the second NJP, you were reduced to CPL (E-4). On 16 August 1983 you were formally counseled regarding your frequent involvement with military authorities, poor personal appearance and military presence, and poor technical proficiency. You were warned that failure to take corrective action regarding your deficiencies could result in processing for administrative separation.

On 24 October 1983 you received your third NJP for use of marijuana and cocaine. Punishment imposed consisted of forfeitures of \$381 per month for two months, reduction in rank to LCPL (E-3), and 30 days of restriction and extra duty. You appealed the punishment and on 9 November 1983 the appeal authority suspended that portion of the punishment involving restriction for a period of six months. The medical record reflects that you were evaluated on 14 November 1983 by a medical officer and were determined not to be dependent on drugs. On 4 January 1984 you were notified that you were being recommended for discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct and drug abuse. You were advised of your procedural rights and after consulting with counsel, you waived your right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer (CO) recommended discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct and drug abuse. In his recommendation, the CO noted that while you were on a drug surveillance program from 18 October to 19 November 1983, you had tested positive three times for cocaine and twice for marijuana. On 31 January 1984 the discharge authority directed separation under other than honorable conditions by reason of misconduct due to drug abuse. You were so discharged on 17 February 1984.

In its review of your application the Board conducted a careful search of your service records for any mitigating matter which might warrant a recharacterization of your discharge. However, other than your prior honorable service, no justification for such a change could be found. The Board noted your claim that you never use drugs and the contentions that despite an otherwise good record, you were subjected to intense and threatening command pressure following the positive urinalysis for cocaine use, and were told that you could not fight the injustice because the urinalyses were never wrong. Your statement indicates that you were attaching a copy of an article from Aviation Safety Magazine on the "Risks of Random Drug Testing." However, that article was not attached to your application.

The Board concluded that recharacterization of your discharge is not warranted given your record of three NJPs, one for a serious offense and another for illicit use of drugs. The Board noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Your claim that you never used drugs appears to be without merit since the evidence of record indicates you used drugs not once but several times during a urinalysis surveillance program. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director